

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re KIMBERLIM M., et al., Persons
Coming Under the Juvenile Court Law.

B245340

(Los Angeles County
Super. Ct. No. CK92730)

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

v.

SELVIN C.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. Robert L. Stevenson, Juvenile Court Referee. Affirmed.

Anne E. Fragasso, under appointment by the Court of Appeal, for Defendant and Appellant.

John F. Krattli, County Counsel, James M. Owens, Assistant County Counsel, and Stephen D. Watson, Deputy County Counsel for Plaintiff and Respondent.

Appellant, Selvin C. (father) appeals from the juvenile court's jurisdictional and dispositional orders with respect to his stepdaughter, Kimberlim (born October 1997), and biological sons, David (born October 2005) and Jerryn (born June 2010). Father contends that substantial evidence does not support the juvenile court's jurisdictional order declaring Kimberlim a dependent child under Welfare and Institutions Code section 300, subdivision (d),¹ and David and Jerryn dependents under subdivision (j). Father also challenges the juvenile court's denial of reunification services as to David and Jerryn under section 361.5, subdivision (c). We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Mother is Kimberlim's biological mother. Father is Kimberlim's step-father. Father and mother are the biological parents of David and Jerryn. Kimberlim's biological father, Oscar M., lives in Texas. Oscar M. and mother are not parties to this appeal.

March 27, 2012 detention report

The family came to the attention of the Los Angeles County Department of Children and Family Services (DCFS) on March 9, 2012, when DCFS received an expedited immediate response referral alleging sexual abuse of Kimberlim by father and alleging that siblings, David and Jerryn, were also at risk of abuse. The caller alleged that Kimberlim reported to her teacher that father had been inappropriately touching and grabbing her all over her body. DCFS responded to Kimberlim's school and also made contact with mother. DCFS investigated and interviewed the three children and mother. DCFS was not able to contact and interview father.

DCFS interviewed mother on March 9, 2012, during which mother initially denied knowledge of any abuse by father. However, during the same interview mother admitted she was aware that something was going on between father and Kimberlim. Kimberlim had told mother that father harassed Kimberlim. Mother recounted an incident which occurred five months prior to the interview when she returned home and heard Kimberlim screaming "stop it" and "leave me alone." Mother entered the room and

¹ All further statutory references are to the Welfare & Institutions Code.

found Kimberlim cornered on the bed and father on top of Kimberlim's waist area. Mother said Kimberlim looked nervous, but both father and Kimberlim claimed they were playing. Mother said after that incident, she heard Kimberlim say to father in Spanish, "I will tell my mother." Also during the March 9 interview, mother recollected that when Kimberlim was 12 years old, her son David indicated to mother verbally and with gestures that father was touching and harassing Kimberlim. Mother told Kimberlim when she was 13 years old, that there were hidden cameras in the house. Mother then asked Kimberlim whether father ever touched her, and Kimberlim responded affirmatively.

Also during the March 9 interview, mother told DCFS of a March 5, 2012 incident when mother called home to check on the children. After mother had talked to all the children, Kimberlim unknowingly did not hang up her cell phone and mother remained on the line and heard Kimberlim yelling "Stop it, leave me alone" and father asking Kimberlim to come to him so he could caress her.

DCFS also interviewed Kimberlim on March 9, 2012. Kimberlim stated that father started caressing her legs four years ago. Kimberlim reported that no one had ever touched her inappropriately before and that she felt very scared and asked father to stop the touching. Kimberlim reported to DCFS that father would usually touch her when mother was at work, and that father would rub her thighs and touch her breasts over her clothes. She added that father would slap her buttocks, rub her vagina over her pants, and on one occasion unbuckled and pulled down her pants. Kimberlim denied being digitally penetrated by father.

During the interview Kimberlim said she reported father's behavior to mother as early as November 2011, but mother continued to leave Kimberlim alone with father. Kimberlim told DCFS she never observed father inappropriately touching either David or Jerryn.

Kimberlim reported that the latest incident of abuse occurred on March 5, 2012. Kimberlim corroborated the incident described by mother in which mother heard over the phone father asking to caress Kimberlim. Kimberlim told DCFS that father entered her

room and indicated to Kimberlim he wanted to touch her. Kimberlim screamed and told father not to touch her. Mother and Kimberlim did not discuss the incident the next day.

David was also interviewed by DCFS on March 9, 2012. When asked whether he had ever seen father touch any of his siblings inappropriately, David responded, “No, I go to the bathroom by myself so no one touches my pee-pee.”

DCFS did not interview Jerryyn given his age at the time.

On March 9, 2012, Kimberlim, David, and Jerryyn were detained pursuant to section 300 for sexual abuse and at risk sibling abuse.

Section 300 petition and detention

On March 27, 2012, DCFS filed a petition alleging, in relevant part, that father sexually abused Kimberlim and that the abuse placed David and Jerryyn at risk of harm, pursuant to section 300, subdivisions (d) and (j).² The juvenile court held a detention hearing and found a prima facie case that the children were described by section 300. The court then issued an initial detention order detaining all three children in foster care.

Interim review report

DCFS filed an interim review report on April 3, 2012, after having conducted a pre-release investigation of the paternal grandmother’s home. DCFS recommended all three children remain appropriately situated in foster care.

Jurisdiction/disposition report

The May 17, 2012 jurisdiction/disposition report contained information collected in another interview of Kimberlim by DCFS on April 23, 2012. Kimberlim reiterated to DCFS that father began sexually abusing her by touching her legs, thighs, stomach, and hands, and gradually started touching her breasts, vaginal area, and buttocks over her clothing. Kimberlim reported to DCFS that father would tell her to be quiet during these incidents, and that father abused her approximately every two to three days while her mother was at work. Kimberlim stated that when she was between 10 and 11 years old,

² The petition also alleged that father physically abused David by striking David’s buttocks with a belt and that mother failed to protect Kimberlim, David, and Jerryyn pursuant to section 300, subdivision (b).

father started touching her breasts and vagina under her clothing and that he would rub his penis around her vagina. Kimberlim also told DCFS that father would insert his penis into her vagina, ejaculate on her stomach area, and clean her up with a towel afterwards.

Kimberlim told DCFS that father would tell her she was pretty, instruct her not to tell anyone that he touched her, and that if she did tell anybody, mother and her brothers would be taken away. She also told DCFS she did not report the full extent of the abuse during the March 9, 2012 interview because she was nervous and afraid she would be separated from mother.

The May 17 jurisdiction/disposition report also memorialized another DCFS interview with David where he told DCFS that father would “bother [Kimberlim] and would grab her hands.” David also said that Kimberlim told mother about the touching and that father lied by saying he did not touch Kimberlim. When asked where father would touch Kimberlim, David responded by pointing to his hands, stomach, and legs, but when asked how father touched Kimberlim, David responded, “I forgot” and ceased to answer any further questions.

The jurisdiction/disposition report documented an April 23, 2012 interview with mother. Mother told DCFS that David, using sign language indicated that father laid Kimberlim on the bed and hit her as she laid down. When mother asked about the incident, both Kimberlim and father denied it happened. Mother also reiterated the incident in October 2011 when mother returned home and heard Kimberlim screaming. At the April 23 interview, mother described “just regular child screams,” but added she found father on top of Kimberlim in a bed “riding her.” Both Kimberlim and father were clothed, and David and Jerryn were in the bed with them. Although father and Kimberlim denied any inappropriate behavior, mother sensed both were nervous.

Mother expressed doubts that father and Kimberlim were being honest with her. Consequently, she told Kimberlim there were hidden cameras in the apartment and asked Kimberlim whether father had done anything inappropriate. Kimberlim responded that father tried to inappropriately touch her by grabbing her breasts and her vaginal area, and that she would use David as a shield to prevent father from touching her. Mother

purchased Kimberlim a cell phone believing it would protect Kimberlim in the event she was home alone with father. Again mother discussed the March 5, 2012 incident in which mother heard over the phone father telling Kimberlim all he wanted to do was caress her. Mother added that she heard David and Jerryn playing in the background and she confronted both Kimberlim and father the next day. Kimberlim denied any inappropriate behavior, but father responded that the devil gets in him.

Mother confronted Kimberlim again on March 9, 2012, at which time Kimberlim told mother that everything mother heard during the March 5 call happened and that father had been molesting her and penetrating her.

DCFS interviewed father on April 19, 2012, and the contents of the interview were reported in the jurisdiction/disposition report. Father denied sexually abusing Kimberlim, said that he and Kimberlim had “a perfect father/daughter relationship” and that he and Kimberlim were never home alone together.

Adjudication

A jurisdiction hearing was held on July 26, 2012. The juvenile court received into evidence the March 27, 2012 detention report, the April 3, 2012 interim review report, the May 17, 2012 jurisdiction/disposition report, the May 17, 2012 last minute information, and the July 26, 2012 interim review report. Based on the information in these reports, the court sustained the section 300 petition and adjudged all three children dependents of the court pursuant to section 300, subdivisions (a), (b), (d), and (j). The juvenile court set a disposition hearing for September 26, 2012. Father objected to admission of statements father reportedly made to the Los Angeles Police Department (LAPD) admitting to sexually abusing Kimberlim as violating the best evidence rule. The juvenile court noted father’s objection, admitted the report containing the alleged admission, but found Kimberlim’s statements clear and credible and that the court did not need to consider father’s admission to reach its decision.

Disposition

At the September 26, 2012 disposition hearing, the juvenile court ordered the children returned to mother’s custody, but pursuant to section 361.5, subdivision (b)(6),

the court found the case was one of severe sexual abuse and ordered no reunification services for father.

DISCUSSION

Father requests that this court reverse the trial court's jurisdictional and dispositional orders because the evidence does not support the section 300 allegations that he sexually abused Kimberlim or that David and Jerryn were at risk of sexual abuse.

I. Standard of review

Challenges to a juvenile court's jurisdictional order are reviewed for substantial evidence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1649.) We look to the record to determine whether substantial evidence supports the juvenile court's findings. (*Ibid.*) If substantial evidence exists, contradicted or not, "[a]ll conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible." (*In re Katrina C.* (1988) 201 Cal.App.3d 540, 547.) If the record supports more than one reasonable inference, we may not substitute our own deductions for those of the juvenile court. (*Ibid.*)

Similarly, we review a juvenile court's dispositional order denying reunification services for substantial evidence. (*In re James C.* (2002) 104 Cal.App.4th 470, 484; *In re Harmony B.* (2005) 125 Cal.App.4th 831, 839.) We affirm if the record contains any substantial evidence supporting the juvenile court's order. (*In re Henry V.* (2004) 119 Cal.App.4th 522.)

II. Jurisdictional order

A. Sexual abuse of Kimberlim

Father argues the evidence does not support the juvenile court's finding that father sexually abused Kimberlim because the court based its finding primarily on Kimberlim's inconsistent statements concerning the sexual abuse and because no physical findings corroborated Kimberlim's statements.

Section 300, subdivision (d) provides, in relevant part, that a court may adjudge a child a dependent of the court if "[t]he child has been sexually abused . . . as defined in Section 11165.1 of the Penal Code, by . . . her parent or guardian or a member of . . . her

household” Penal Code section 11165.1, subdivision (4) describes sexual abuse as “[t]he intentional touching of the genitals or intimate parts (including the breasts, genital area, groin, inner thighs, and buttocks) or the clothing covering them, of a child, . . . for purposes of sexual arousal or gratification” The absence of physical evidence of sexual abuse does not preclude a finding of sexual abuse. (See *In re Jordan R.* (2012) 205 Cal.App.4th 111, 137.)

Substantial evidence supports the juvenile court’s finding of sexual abuse. Based on Kimberlim’s statements to DCFS, father touched her inappropriately on multiple occasions over a period of four years starting when she was nine years old. Father caressed her legs, rubbed her thighs, touched her breasts over her clothes, slapped her buttocks, and rubbed her vagina over her pants. Father also rubbed his penis on her genital area, inserted his penis into her vagina, and ejaculated on her stomach area. On at least one occasion, Kimberlim indicated father put his mouth on her genital area. As recently as March 12, 2012, Kimberlim reported that father took off Kimberlim’s clothes, rubbed his penis on her, and ejaculated around her genital area.

The juvenile court expressly stated it found Kimberlim credible. We defer to the juvenile court’s assessment of the credibility of witnesses and the weight of the evidence. (*In re Cole C.* (2009) 174 Cal.App.4th 900, 915-916.)

Moreover, the record contains statements by mother and David that corroborate Kimberlim. David reported that father would grab Kimberlim’s hands, and touch Kimberlim’s stomach and legs. Mother stated that on one occasion she heard Kimberlim screaming at father to leave her alone and when mother entered the room, mother found father lying on top of Kimberlim and “riding on her.” Mother reported that both David and Jerryn were in the room with father and Kimberlim at the time.

These statements are reasonable, credible, and solid. As such, they constitute substantial evidence supporting the juvenile court’s conclusion that father sexually abused Kimberlim within the meaning of section 300, subdivision (d).

B. Admission of father's statements to the LAPD

Father also argues that the trial court erred by admitting into evidence a DCFS report referencing father's alleged confession to the LAPD that he sexually abused Kimberlim. Father contends the court erred because the report of the confession was not "the best evidence that the statement had been made by father."

The trial court has broad discretion regarding the admissibility of evidence. (*In re Jordan R.* (2012) 205 Cal.App.4th 111, 121 (*Jordan R.*)) We review challenges to the juvenile court's admission of evidence for abuse of discretion. The juvenile court abuses its discretion if it exceeded the bounds of reason. (*Ibid.*) In addition, the erroneous admission of evidence is subject to the harmless error rule. (See *People v. Watson* (1956) 46 Cal.2d 818, 835-836 [reversal not merited when a different outcome would not otherwise have been probable].)

The juvenile court reached its conclusions specifically without considering father's alleged confession. The juvenile court explicitly stated its findings were based substantially on Kimberlim's statements in the detention/jurisdiction report, which the court found to be credible. Based on Kimberlim's statements, discussed earlier, the juvenile court found considerable evidence to support its findings without considering father's alleged confession. Even if the juvenile court's admission of father's alleged confession was in error, the error was immaterial and harmless in that it was not used by the juvenile court and thus does not merit reversal of the juvenile court's findings.

C. Risk of harm of sexual abuse of David and Jerryn

Having affirmed the juvenile court's finding of sexual abuse, we address father's contention that the jurisdictional order with respect to David and Jerryn must be reversed in that there was no evidence the sexual abuse of Kimberlim subjected David and Jerryn to substantial risk of abuse.

Section 300, subdivision (j) provides, in relevant part, that any sibling of a child adjudged to be a dependent of the court pursuant to section 300, subdivision (d) may also be adjudged a dependant of the court if there is a substantial risk that the sibling will be abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i). Subdivision (j)

provides a number of factors to determine substantial risk of abuse including: (1) the circumstances surrounding the abuse; (2) the age and gender of the siblings; (3) the nature of the sexual abuse; and (4) any other probative factors. (§ 300, subd. (j).)

Recently, the California Supreme Court considered whether sexual abuse of a daughter supports jurisdiction over sons, absent evidence of sexual abuse of the sons or evidence the sons were aware of the sexual abuse. (*In re I.J.* (2013) 56 Cal.4th 766, 770 (*I.J.*).)³ The juvenile court found that father ““sexually abused his own daughter “by fondling the child’s vagina and digitally penetrating the child’s vagina and forcefully raped the child by placing father’s penis in the child’s vagina.””” (*Id.* at p. 778.) Based on this finding, the Supreme Court upheld the juvenile court’s jurisdictional finding as to the sons. The court emphasized that the father sexually abused his daughter “while the other children were living in the same home and could easily have learned of or even interrupted the abuse.” (*Ibid.*) Weighing the totality of the circumstances, the court concluded that “[t]he serious and prolonged nature of father’s sexual abuse of his daughter under these circumstances support[ed] the juvenile court’s finding that the risk of abuse was substantial as to all the children.” (*Ibid.*)

Considering the totality of the circumstances surrounding the sexual abuse in this case, the juvenile court was justified in finding David and Jerryn to be at substantial risk of sexual abuse. As in *I.J.*, father’s conduct involved forceful rape over a period of years. David and Jerryn lived in the house where the abuse took place, and moreover, both David and Jerryn were in the same room as Kimberlim and father during at least one incident of sexual abuse. The totality of the circumstances of the sexual abuse supports the juvenile court’s orders as to David and Jerryn.

Father cites *In re Maria R.* (2010) 185 Cal.App.4th 48, 67-68 and *Jordan R.* for the proposition that sexual abuse of a female sibling does not put male siblings at risk of sexual abuse absent evidence demonstrating the father has an interest in sexually abusing

³ The parties were invited to comment on what affect, if any, *I.J.* has here. We are not persuaded by father’s argument that *I.J.* is factually distinguishable because Kimberlim is a stepdaughter rather than a biological daughter.

the male siblings. Given the recent holding in *I.J.* disapproving of these cases to the extent they are inconsistent with *I.J.*, father's reliance on them is inapposite.

III. Denial of reunification services

Father argues that, even if he did sexually abuse Kimberlim, the trial court erred by denying him reunification services with respect to David and Jerryn. Specifically, father argues that no evidence supports a finding that the sexual abuse of Kimberlim placed David or Jerryn at risk of sexual abuse, and that David and Jerryn would benefit from father receiving reunification services.

Section 361.5, subdivision (b)(6) provides that reunification services are not warranted if the juvenile court finds by clear and convincing evidence, that a child has been adjudicated a dependent of the juvenile court pursuant to any subdivision of section 300 as a result of severe sexual abuse. A court may base its finding of severe sexual abuse on evidence of sexual intercourse involving genital-genital or oral-genital contact, or the penetration or manipulation of a child's genital organs for the sexual gratification of the parent. (§ 361.5, subd. (b)(6).) If the court finds by clear and convincing evidence that section 361.5, subdivision (b)(6) applies, "the court shall not order reunification for a parent . . . unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the [children]." (§ 361.5, subd. (c).) Subdivision (c) thus contains a presumption against reunification unless the juvenile court finds that reunification is in the best interest of the children.

Because we conclude there was substantial evidence of sexual abuse and that David and Jerryn were at risk of abuse, we now decide whether father met his burden to demonstrate that reunification is in the best interest of the children. We conclude father did not meet his burden.

Though father argues that neither David nor Jerryn were exposed to any severe sexual abuse of Kimberlim and that he and his sons have a positive relationship, the record belies father's contention. Instead, the record shows there was an occasion when David and Jerryn were in the room when father sexually abused Kimberlim and that David was aware that father's conduct was inappropriate and reported it to mother.

Moreover, Kimberlim said she used David as a shield to prevent father from touching her. There is no evidence that a continued relationship with father would be beneficial to any of the children. As such, father's argument that reunification is in the best interest of David and Jerry is unavailing. There is substantial evidence in the record to support the juvenile court's finding that father did not meet his burden pursuant to section 361.5, subdivision (c).

DISPOSITION

The juvenile court's jurisdictional and dispositional orders are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.
ASHMANN-GERST